

**DECISION**

**THE COMPTROLLER GENERAL  
OF THE UNITED STATES**  
WASHINGTON, D.C. 20548

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**FILE:** B-212410

**DATE:** November 14, 1983

**MATTER OF:** Mercury Consolidated Inc.

**DIGEST:**

Protest untimely filed with procuring agency (more than 10 days after basis of protest was known) and then filed with GAO after denial by contracting officer is not for consideration on merits under 4 C.F.R. § 21.2(a), which requires that initial protest to agency be filed on a timely basis.

Mercury Consolidated Inc. (Mercury) protests the rejection of its proposal as outside the competitive range under request for proposals (RFP) DAAG08-82-R-0214, issued by the Department of the Army for base operations support.

We dismiss the protest as untimely.

By letter dated April 5, 1983, the Army informed Mercury that its proposal was found to be "technically unacceptable" and that no further negotiations with Mercury were contemplated. Mercury received this letter on April 8, 1983. Mercury claims that it learned on June 1, 1983, that the Army had decided after a cost comparison to keep the services solicited by the RFP in-house. Mercury protested to the Army by letter dated June 14, 1983, which letter the Army received on June 15, 1983. In denying Mercury's protest as untimely, the contracting officer stated that Mercury had failed to protest within 10 working days of notification of the government's adverse action, i.e., the exclusion of Mercury's proposal from the competitive range.

Mercury contends that its protest should have been considered timely as an appeal under procedures authorized by OMB Circular A-76, paragraph 11, and implemented by the Army under DA Circular 235-1, chapter 3, paragraph 3-6(d), against the Army's decision to keep the services solicited by the RFP in-house. Mercury's protest argues that the Source Selection Board (SSB), which conducted the

027153

negotiations with the offerors in selecting the competitive range, lacked the knowledge of the levels of staffing needed to perform efficiently the services solicited by the RFP necessary to make both a competent selection of the competitive range and the final selection of a contractor to use in the cost comparison.

We find the protest to be untimely under our Bid Protest Procedures (4 C.F.R. part 21 (1983)). Section 21.2(a) provides that, where a protest has been initially filed with the procuring agency on a timely basis, any protest to our Office will be considered if filed within 10 days of notification of initial adverse agency action. Section 21.2(b)(2) states that protests must be filed within 10 working days after the basis of the protest is known. In our view, Mercury's protest generally challenges the propriety of the SSB's determination that the levels of staffing proposed by Mercury were inadequate and that, thus, Mercury's proposal was technically unacceptable. Therefore, the basis of Mercury's protest is the rejection of its proposal as outside the competitive range. Mercury's proposal was never compared with the government cost estimate because of this competitive range determination. Mercury knew of the basis of its protest upon receipt of the Army's letter of April 5, on April 8, but the Army did not receive its protest until June 15 (more than 2 months later). Accordingly, since the protest was untimely filed with the Army, it is not for consideration by our Office. SACO Defense Systems Division, Maremont Corporation, B-212436, August 10, 1983, 83-2 CPD 200.

We dismiss the protest.

*Harry R. Van Cleve*  
Harry R. Van Cleve  
Acting General Counsel